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Department of the Treasury
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Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:4
PLR-113058-10
Date: SEPTEMBER 21, 2010

RE:

Decedent =
Spouse =
Children =
Trust =
Date 1 =
Date 2 =
A =

Dear :

This responds to your letter dated February 23, 2010 requesting rulings for an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to make a Qualified Domestic Trust (QDOT) election under § 2056A of the Internal Revenue Code with respect to a trust.

The facts and representations submitted are as follows: On Date 1, Decedent, a resident of State and a lawful permanent resident of the United States, died testate, survived by spouse (Spouse) and four children (Children). Neither Decedent nor Spouse is a citizen of the United States. Children are citizens of the United States. Children are executors of Decedent's estate.

Under Article Second of his Last Will and Testament (Will), Decedent bequeathed A percent of the residue of his estate in trust (Trust) for the benefit of Spouse. Children are trustees of Trust. Under the terms of Trust, the trustees must pay all income to Spouse and may distribute principal to Spouse or use it solely for her benefit during her lifetime. Upon Spouse's death, Trust will terminate, and the trustees will distribute the assets equally to Children.

On Date 2, the executors of Decedent's estate timely filed a Form 706, United States Estate (and Generation-Skipping) Tax Return and elected on the Schedule M for the assets of Trust to qualify for the estate tax marital deduction. The executors represent that they engaged a tax accountant to prepare the Form 706 and that the accountant failed to make the election to treat the trust as a QDOT on such form.

The estate is requesting an extension of time under §§ 301.9100-1 and 301.9100-3, to make a QDOT election with respect to Trust.

Section 2001(a) imposes a tax on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

Section 2056(a) provides that, for purposes of the tax imposed by § 2001, the value of the taxable estate is to be determined by deducting from the value of the gross estate an amount equal to the value of any interest in property that passes or has passed from the decedent to the surviving spouse.

Under § 2056(b)(7), a marital deduction is allowed for qualified terminable interest property (QTIP), which is defined under § 2056(b)(7)(B) as property (i) which passes from the decedent, (ii) in which the surviving spouse has a qualifying income interest for life, and (iii) to which the election under § 2056(b)(7)(B)(v) applies. Section 2056(b)(7)(B)(v) provides that the election with respect to any property shall be made by the executor on the return of tax imposed by § 2001.

Section 2506(b)(7)(B)(ii) provides that a surviving spouse has a qualifying income interest for life in property if (i) the surviving spouse is entitled to all of the income from the property, payable annually or at more frequent intervals, and (ii) no person has a power to appoint any part of the property to any person other than the surviving spouse.

Section 2056(d)(1)(A) provides that if the surviving spouse is not a citizen of the United States, no deduction shall be allowed under § 2056(a). However, § 2056(d)(2)(A) provides that § 2056(d)(1)(A) will not apply to any property passing to the surviving spouse in a QDOT.

Under § 2056A, in order for a trust to qualify as a QDOT: (1) the trust instrument must require that at least one trustee of the trust be an individual citizen of the United States or domestic corporation and that no distribution other than a distribution of income may be made from the trust unless a trustee who is an individual citizen of the United States or a domestic corporation has the right to withhold from the distribution the additional estate tax imposed by § 2056A(b)(1) on the distribution; (2) the trust must meet the requirements that are prescribed under Treasury regulations to ensure the collection of the tax imposed by § 2056A(b); and (3) the executor must make the election prescribed by § 2056A(d) to treat the trust as QDOT.

Under § 2056A(d) and § 20.2056A-3(a), the election to treat a trust as a QDOT must be made on the last federal estate tax return filed before the due date (including extensions of time to file actually granted) or, if a timely return is not filed, on the first federal estate tax return filed after the due date. The election, once made, is irrevocable. No election may be made if the return is filed more than 1 year after the due date of the return.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, an extension of time until 120 days after the receipt of this letter is granted to make a QDOT election with respect to Trust and A percent of the residue of Decedent's estate that passed in Trust pursuant to Article Second of Decedent's Will.

The election should be made on a supplemental Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the supplemental Form 706. A copy is enclosed for this purpose.

Furthermore, except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. The ruling(s) in this letter pertaining to the federal estate and/or generation-skipping transfer tax apply only to the extent that the relevant sections of the Code are in effect during the period at issue.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with a power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

James F. Hogan
Chief, Branch 4
(Passthroughs & Special Industries)